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08/911341

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/911,341	08/14/97	LEWIS	R 1339.07.A
EXAMINER			
ASHER, K			
ART UNIT	PAPER NUMBER		
3735	4		

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DATE MAILED: 02/04/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 11/17/98

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-9 & 13-19 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-9 & 13-19 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on 11/17/98 is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of Reference Cited, PTO-892 (2 sheets)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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Applicant's election without traverse of Group I, Claims 1-9 and 13-19 in Paper No. 3 is acknowledged.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 1 is rejected under 35 U.S.C. § 103 as being unpatentable over Tenna in view of Monro.

Tenna teaches the basic mask structure recited with the exception of the top straps being fixed to the top edges of both the frame and the head piece. See face plate 12, frame 2, straps 4, face seal of Figure 4, nose cup 13, and the head piece roughly illustrated in Figure 3. Monro also teaches a face mask assembly having a frame 10, viewing areas 28, straps 30-32, and a head piece 29. Monro teaches fixing the top straps 30 to both the top of the frame 10 (at 14) and the top of the head piece 29 - see stitching shown in Figure 1. Monro further teaches adjustably fixing the bottom straps 31 and 32 to the head piece. Accordingly, shortening of the bottom straps 31 and 32 pulls the headpiece and face frame into a sealing position on the user. Monro does not teach a separate sealing flange like Tenna does in Figure 4, but such is

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irrelevant because the same strap-mask body/frame connection is made. Given the teachings of Monro, it would have been obvious to one of ordinary skill in the art to have fixed the upper straps of Tenna's mask assembly to make the device easier and quicker to put on and adjust.

Claims 2-4 are rejected under 35 U.S.C. § 103 as being unpatentable over Tenna and Monro as applied to claim 1 above, and further in view of Urso and Brostrom et al.

Both Tenna and Monro are silent as to the material of the headpiece. So, one of ordinary skill in the art would have looked to the teachings of the prior art as a whole to determine what materials to have used. Both Urso and Brostrom et al teach similar face mask assemblies using headpieces and straps to hold the face piece/shield in sealing contact with the face of the wearer. Urso teach (columns 3 and 4) to make the headpiece of "KEVLAR" (column 3, line 14), and to use a mixture of stretchable and non-stretchable straps (column 3, lines 1+), and to sue low friction head piece materials (column 4, lines 6+) to increase user comfort and to aid in quick-donning of the mask. Brostrom et al (column 4, in particular) teach much the same materials for the same reasons, and specifically "...either stretch or non-stretch materials..." for the headpiece. In view of the teachings of Urso and Brostrom et al, it would have been obvious to one of ordinary skill in the art to have so made the headpiece of Tenna for the same reasons - comfort and ease of donning. With regard to claim 3, see the rectangular head piece of Monro, and the teachings of Brostrom et al in column 5, lines 17+ to make the headpiece of any desired shape

- including rectangular. Again, lacking any particular teachings of a shape by Tenna, it would have been obvious to one of ordinary skill in the art to have looked to the prior art for guidance. The prior art teaches that the shape of the headpiece would have been obviously determined by one of ordinary skill in the art via design choice. With regard to claim 4, see Figure 1 of Monro.

Claims 5-7 are rejected under 35 U.S.C. § 103 as being unpatentable over Tenna and Monro as applied to claim 1 above, and further in view of Backlund.

With regard to claim 5, it is noted that neither Tenna nor Monro teach providing spectacles or spectacle mounting structure in their face mask assemblies. Backlund does teach a similar face mask assembly and the provision of spectacles for those wearers who need them. Further, Backlund teach the recited structure of a nose piece mount for better vision (columns 1 and 2), frames (3a), lenses (3), a bridge (Figure 2), a mounting member (5), carried by the nose cup (2'), and support arms (4) fixed to the bridge and adjustably fixed to the mounting member (see column 2, lines 28-58 of Backlund). In view of the teachings of Backlund, it would have been obvious to one of ordinary skill in the art to have so provided the Tenna device so that more people could wear the Tenna face mask assembly. With regard to claim 6, note the teachings of Backlund in column 2, lines 42-47, and lines 53-58. With regard to claim 7, the mere duplication of mounting arms and reversal of whether the arms are mounted to the nose cup verses the bridge it would have been obvious to one of ordinary skill in the art as a mere design choice.

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Claims 1 and 8 are rejected under 35 U.S.C. § 103 as being unpatentable over Warncke in view of Monro.

Warncke teaches the face mask assembly as is broadly recited in claims 1 and 8 with the exception of teaching the strap structure used to hold the mask assembly on a wearer's face. Given the lack of any particular mounting structure being disclosed by Warncke, it would have been obvious to one of ordinary skill in the art to have looked to the prior art for a mounting structure to use with Warncke. Such typical face mask mounting structure is taught by Monro.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Backlund.

Straps are inherent in the use of the Backlund mask, else it would fall off.

Claim 15 is rejected under 35 U.S.C. § 103 as being unpatentable over Backlund.

With regard to claim 15, the mere duplication of mounting arms and reversal of whether the arms are mounted to the nose cup verses the bridge it would have been obvious to one of ordinary skill in the art as a mere design choice.

Claim 16 is rejected under 35 U.S.C. § 103 as being unpatentable over Backlund as applied to claim 13 above, and further in view of Monro.

Given the lack of any particular mounting structure being disclosed by Backlund, it would have been obvious to one of ordinary skill in the art to have looked to the

prior art for a mounting structure to use with therewith. Such typical face mask mounting structure is taught by Monro

Claims 17-19 are rejected under 35 U.S.C. § 103 as being unpatentable over Backlund as applied to claim 16 above, and further in view of Urso and Brostrom et al.

Backlund is silent as to the material of the headpiece. So, one of ordinary skill in the art would have looked to the teachings of the prior art as a whole to determine what materials to have used. Both Urso and Brostrom et al teach similar face mask assemblies using headpieces and straps to hold the face piece/shield in sealing contact with the face of the wearer. Urso teach (columns 3 and 4) to make the headpiece of "KEVLAR" (column 3, line 14), and to use a mixture of stretchable and non-stretchable straps (column 3, lines 1+), and to sue low friction head piece materials (column 4, lines 6+) to increase user comfort and to aid in quick-donning of the mask. Brostrom et al (column 4, in particular) teach much the same materials for the same reasons, and specifically "...either stretch or non-stretch materials..." for the headpiece. In view of the teachings of Urso and Brostrom et al, it would have been obvious to one of ordinary skill in the art to have so made the headpiece of Backlund for the same reasons - comfort and ease of donning. See the rectangular head piece of Monro, and the teachings of Brostrom et al in column 5, lines 17+ to make the headpiece of any desired shape - including rectangular. Again, lacking any particular teachings of a shape by Backlund, it would have been obvious to one of ordinary skill in the art to have looked to the prior art for guidance. The prior art

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teaches that the shape of the headpiece would have been obviously determined by one of ordinary skill in the art via design choice. Note also Figure 1 of Monro.

Claim 9 is rejected under 35 U.S.C. § 103 as being unpatentable over Warncke and Monro as applied to claims 1 and 8 above, and further in view of Hansson.

Note the teachings of Hansson in column 2, paragraph 2+ to vary the contour of the seal according to typical facial contours to achieve the best possible seal. Given these teachings, it would have been obvious to one of ordinary skill in the art to have so shaped the seal of Warncke for the same reasons.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Note the spectacle mounting hardware of Mark, Wise et al, Roland, Nielson, Bitner et al, Rodenhouse, Schutz et al; the head harnesses taught by Harrison et al; and the face seal contours taught by Morgan.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner K. L. Asher at telephone number (703) 308-0858. Any inquiry of a general nature should be directed to the Group receptionist at (703) 308-0858. Status inquiries are to be handled according to MPEP section 203, and directed to the Group receptionist, not the Examiner. Inquiries as to Terminal Disclaimer and PCT requirements should be directed to the Group Paralegal, Mr. Andre Robinson, at (703) 308-2104. The informal facsimile phone number for Technology Center 3735 is (703) 306-4520. The Formal Fax for Group 3700 are (703) 305-3590. PLEASE CALL THE EXAMINER PRIOR TO SENDING ANY FAX to the 306-4520 number. This will ensure that the Examiner receives the fax promptly.

January 31, 1999


Kimberly L. Asher
Primary Patent Examiner
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